

## CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

DD/A Registry  
81-0450/1

4 MAR 1981

The Honorable Thomas P. O'Neill  
Speaker of the House of Representatives  
Washington, DC 20515

Dear Mr. Speaker:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act during calendar year 1980.

During 1980, 2,992 requests were logged and put into processing by the Agency, of which 1,212 were handled under the Freedom of Information Act. Several hundred additional request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) rather than the Freedom of Information Act. Production/workload statistics for CY 1980 are presented below. The figures given for cases carried over from the previous year have been adjusted to conform with our computer data. (These statistics are necessarily tentative inasmuch as we sometimes have to reactivate "closed" cases or are able to "close out" a case retroactively.)

	<u>FOIA</u>	<u>PA</u>	<u>EO*</u>	<u>Totals</u>	<u>(%)</u>
<b>Workload</b>					
Cases carried over from 1979	1182	1166	303	2651	(46.98)
Cases logged during 1980	1212	1614	166	2992	(53.02)
Totals:	2394	2780	469	5643	
<b>Actions taken</b>					
Granted in full	161	77	63	301	(11.61)
Granted in part	150	293	121	564	(21.76)
Denied in full	113	38	34	185	(7.14)
No records found	108	868	0	976	(37.65)
No CIA records found	10	33	0	43	(1.66)
Canceled	353	16	2	371	(14.31)
Withdrawn	39	9	1	49	(1.89)
Referred elsewhere	63	2	2	67	(2.58)
Early appeal	16	9	0	25	(0.96)
Early litigation	10	1	0	11	(0.42)
Totals:	1023	1346	223	2592	
Cases carried over to 1981	1371	1434	246	3051	
Change in backlog	+189	+268	-57	+400	(15.09)

\*These are requests processed under the mandatory classification review provision of Executive Order 12065. Most of them are either referrals from the Presidential libraries or declassification requests from other federal agencies.

In addition to the aforementioned requests, the Agency also responded during CY 1980 to many other requests for copies of unclassified CIA publications, such as maps, reference aids, monographs, and translations of foreign language broadcasts and articles from the foreign press—either directly or by referring the requesters to those government agencies (the Library of Congress, the Government Printing Office, and the National Technical Information Service of the Department of Commerce) responsible for the distribution of these products.

You will note that our backlog of unanswered requests increased by 400 cases during CY 1980. This increase occurred despite the fact that the manpower devoted to these programs was more than 29 percent greater than for the previous year, CY 1979.\* The principal reason for this phenomenon was the extraordinary demands placed upon the Agency by those cases which have gone into litigation. In order to meet court-imposed deadlines, it has been necessary in many instances to divert personnel from the processing of initial requests or administrative appeals. We did succeed, nonetheless, in reducing the backlog of administrative appeals by approximately 20 percent during the course of the year.

Because of the nature of the requests that we receive, the complexity of our compartmented and decentralized systems of records, and the sensitivity of the information contained therein, the amount of manpower required of the CIA to process a typical request is probably greater than for any other federal agency. Needless to say, the resources that the Agency can afford to allocate to these programs are limited if we are to carry out effectively our foreign intelligence mission. Moreover, even if additional manpower could be made available without impairing our other vital activities, the problem would still not be totally solved. Expertise is required of the reviewer. He must, in many instances, have detailed knowledge of the circumstances under which information was collected in order to make a judgment on whether its disclosure might jeopardize intelligence sources and methods. Thus, only those individuals with the appropriate background knowledge and experience can be entrusted with the review of records. Accordingly, as long as the volume of requests we receive remains at a high level, it appears unlikely that we will be able to achieve any substantial reduction of the processing backlog or significantly shorten the time required for responses.

The public benefit resulting from this expenditure of tax monies by the CIA has not, in our judgment, been commensurate. Some of the requests that the Agency has processed have led to the release of information of interest to certain segments of the public. Such instances have, however, been relatively rare. Most of the records held by the CIA are classified under the criteria of Executive Order 12065 and/or involve intelligence

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\*Subsequent to submitting our report to the Congress for CY 1979, we discovered that the reporting on manpower resources had been incomplete. Approximately 110 man-years of labor were allocated to processing requests, appeals, and litigation during CY 1979, rather than the 100 man-years cited in our report.

sources and methods. As such, this information is exempted from access under the Freedom of Information Act. Whenever feasible, segregable portions of otherwise exempt records are released, but the public benefit arising from the disclosure of fragmentary and often inaccurate raw intelligence data is dubious, at best.

As has been emphasized in our previous reports to the Congress and in testimony by former DDCI Frank Carlucci, we have also been concerned with the effect of the Freedom of Information Act on the willingness of individuals and foreign governments to cooperate with the United States. In order to operate effectively, a foreign intelligence organization must be able to convince the individuals and organizations from whom it seeks information and other forms of cooperation that the information that they provide and the fact of their collaboration will be kept secret. Frankly, this is a difficult task when it is well known throughout the world that the CIA is subject to the provisions of the Freedom of Information Act. We can assure our sources, of course, that the exemptions provided by subsections (b)(1) and (b)(3) of the Act protect from disclosure both classified material and information relating to intelligence sources and methods. We can also point out that, through the use of multiple layers of review, we have endeavored to ensure that such information is never released. It is very difficult, however, to convince our sources and potential sources that they have nothing to fear when they are constantly reading sensationalized accounts in the press concerning the CIA and its alleged operations. Although it is rare indeed that such stories have been based upon actual Freedom of Information releases, there is a tendency in the minds of the persons who have been asked to place their trust in the CIA's ability to keep confidences to attribute them to the Act. The Freedom of Information Act has become symbolic of openness in government and leaks of sensitive information. Moreover, the more sophisticated and informed of these persons are fully aware that human error can and has resulted in the release of classified information under the Freedom of Information Act, despite our precautions. They are also aware that the courts can overrule the Agency's denials and require the CIA to release information that is properly classified and/or involves sensitive intelligence sources and methods. It is not surprising under these circumstances that confidence in the CIA's ability to protect secrets has eroded, and that our ability to collect information essential to the national security of the United States has been somewhat impaired.

In many other countries, including democracies, the mere existence of a secret intelligence service is regarded as a state secret; yet the CIA is expected to engage in a full range of intelligence activities and, at the same time, to respond to requests for its records. We think that even our critics will agree that an effective foreign intelligence service is essential to the survival of our nation in the nuclear age. The Freedom of Information Act, we submit, has hindered our ability to perform our vital mission. While we do not question the principle that U.S. citizens should

have the right to know what their government is doing and has done in the past, we firmly believe that an exception should be made in the case of the CIA. It is hoped, therefore, that the Congress will see fit to exempt the Agency and its records from the provisions of the Freedom of Information Act.

Sincerely,

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Max Hugel  
Deputy Director  
for  
Administration

Enclosure

## FREEDOM OF INFORMATION ACT

## ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1980

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 263

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., requests) invoked</u>
(b)(1)	214
(b)(2)	8
(b)(3)	240
(b)(4)	10
(b)(5)	9
(b)(6)	73
(b)(7)	5
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	240

(c) Other authority: None

There were 599 other cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the requests, or there proved to be no records to act upon. Accordingly, they have not been included in the 263 figure provided in answer to question No. 1, above. In 108 instances, our searches uncovered no records relevant to the requests. In 10 other cases, we found no CIA-originated records, but did locate in our files pertinent third-agency documents--which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 63 instances where the information requested did not fall under CIA's jurisdiction, and the requests were thus referred to the agency or

agencies having cognizance over the records. In 16 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another 10 cases, the requesters went into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Thirty-nine requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 353 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc. In each of the latter cases, at least 90 days had elapsed without a reply from the requester before action was taken to discontinue processing.

3. Total number of intra-agency appeals from adverse initial decisions made pursuant to subsection (a)(6): 43

In 22 additional cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act upon appeal, in accord with the wishes of the appellants. These were requests for access to personal records, which the CIA usually processes under the Privacy Act rather than the Freedom of Information Act. Also, based upon the failure of the Agency to reply to Freedom of Information requests within 10 working days, 16 appeals were received due to a lack of response.

- (a) Number of appeals in which, upon review, request for information was granted in full: 3
- (b) Number of appeals in which, upon review, request for information was denied in full: 26
- (c) Number of appeals in which, upon review, request was denied in part: 37

4. Authority relied upon for each such appeal determination:(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b)(1)	50
(b)(2)	1
(b)(3)	64
(b)(4)	1
(b)(5)	4
(b)(6)	16
(b)(7)	3
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	64

5. Names and titles of each person who, on appeal, is responsible for the denial in whole or in part of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Dirks, Leslie C.	Deputy Director for Science and Technology	4
Hart, William N.	Associate Deputy Director for Administration	1
Hineman, Richard E.	Deputy Director, National Foreign Assessment Center	11
McMahon, John N.	Deputy Director for Operations	43
Wortman, Don I.	Former Deputy Director for Administration	17

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F); etc.: None

7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

See Tab A.

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab B for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1980 was \$11,793.32.

9. A. Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

B. Costs:

A total of 257,420.5 actual man-hours of labor was devoted during calendar year 1980 to the processing of Freedom of Information, Privacy Act, and mandatory classification review requests, appeals, and litigation. Taking into account leave and holidays, this would equate to approximately 142 full-time personnel. We estimate the average grade for professional employees involved in these programs at GS-12/5, and for clerical employees, GS-06/4. The funds expended during calendar year 1980 on personnel salaries, if overtime payments are ignored, would thus amount to over \$2,900,000. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to slightly less than \$3,200,000. Of this total, approximately \$1,735,000 can be attributed to the Freedom of Information Act.

We have not attempted to calculate such additional costs as office space, equipment rentals, supplies, computer support, etc. It is believed, however, that these expenditures would amount to no more than 5 to 10 percent of the personnel costs.



C. Compliance with time limitations for agency determinations:

- (I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

- (II) Provide the total number of instances where court appeals were taken on the basis of exhaustion of administrative procedures because the agency was unable to comply with the request within the applicable time limits: 12

In addition, five Privacy Act requesters sued the Agency on the grounds that we had not responded to their requests or appeals in a timely manner. In the litigation, these requests will be considered under the provisions of the Freedom of Information Act, as well as those of the Privacy Act.

- (III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: Two

Copies of the pertinent Orders are attached (Tab C).

D. Internal Memoranda:

See Tab D.